

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FILED/ACCEPTED

AUG 15 2012

Federal Communications Commission  
Office of the Secretary

In the Matter of

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Outfitter Satellite, Inc.

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WC Docket No. 06-122

)

CC Docket No. 96-45

Petition for Limited Waiver of

)

Universal Service Fund Rules

)

**PETITION FOR LIMITED WAIVER OF  
UNIVERSAL SERVICE FUND RULES**

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August 15, 2012

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SUMMARY

Outfitter Satellite, Inc. (“Outfitter” or “Company”) respectfully requests a limited waiver of the Commission’s federal universal service fund (“USF”) contribution requirements in order to cancel the USF true-up contribution amount for calendar year 2004 (“2004 True-up”) based on its revised 2005 FCC Form 499-A Telecommunications Reporting Worksheet filed in February 2006 (“Revised 2005 499-A”). The 2004 True-up is only now being invoiced as USAC failed to properly process the Revised 2005 499-A despite having received it on more than one occasion.

A waiver and cancellation of the 2004 True-up is warranted in the instant case because the 2004 True-up, based on the Revised 2005 499-A which overstates the Company’s actual USF contribution base, is excessive. A significant portion of the Company’s revenue reported on the Revised 2005 499-A should not have been included in its USF contribution base.

[REDACTED FOR PUBLIC INSPECTION]

A waiver and cancellation of the 2004 True-up would not harm the USF or administration thereof, and would be consistent with the statutory requirement that contributions are “equitable and non-discriminatory.”

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**PETITION FOR LIMITED WAIVER OF  
UNIVERSAL SERVICE FUND RULES**

Pursuant to Section 1.3 of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) rules,<sup>1</sup> Outfitter Satellite, Inc. (“Outfitter” or “Company”),<sup>2</sup> by its undersigned counsel, respectfully requests a limited waiver of the Commission’s federal universal service fund (“USF”) contribution requirements to prevent an inequitable USF overpayment.<sup>3</sup> Specifically, Outfitter requests a limited waiver of Section 54.706(a) in order to cancel the USF true-up contribution amount for calendar year 2004 (“2004 True-up”) calculated from overstated revenue on its revised 2005 FCC Form 499-A Telecommunications Reporting Worksheet filed in February 2006 (“Revised 2005 499-A”).<sup>4</sup> Additionally, Outfitter requests a limited waiver of: (i) Section 54.713(b) with respect to interest, administrative charges and penalties which would be applied to the 2004 True-up; and (ii) Section 54.713(e) so that Outfitter’s ongoing USF payments are applied to amounts due for current contributions rather than amounts due on the 2004 True-

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> The factual representations contained herein concerning Outfitter are supported by the declaration of Judy McKinley, Outfitter’s Executive Administrator. See Exhibit 1.

<sup>3</sup> 47 C.F.R. §§ 54.706(a), 54.713(b) & (e). The Company also requests waiver of any additional Commission regulations to the extent the Commission deems such waiver necessary in order to grant the relief requested.

<sup>4</sup> Alternatively, Outfitter requests waiver of the March 31, 2006 revision deadline associated with the Revised 2005 499-A in order to file an amended worksheet to correct over-reporting issues.

up. Accordingly, Outfitter also requests that the Commission direct the Universal Service Administrative Company (“USAC”) to stay application of Sections 54.713(b) & (e), consistent with the aforementioned limited waiver requests, while this petition is under consideration.<sup>5</sup>

## I. BACKGROUND

Outfitter is a small business that leases and sells mobile satellite-phone equipment, accessories, and airtime. The Company resells the services of various underlying satellite-phone service providers. Outfitter provides services to various end-user customers, including travelers requiring portable voice and data capabilities in remote locations (often international destinations) and, more importantly, to emergency response organizations (*e.g.*, private business, non-profit and government) requiring mission critical voice and data services. Outfitter’s services have often been utilized by these “emergency responders” in locations where conventional mobile or landline communications have been impacted by natural disasters, such as hurricanes.<sup>6</sup> Outfitter’s “emergency responder” customers have included hospitals, county governments, emergency management services, state governments, and various National Guard accounts.<sup>7</sup>

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<sup>5</sup> At a minimum, Outfitter requests that its ongoing payments be applied to amounts owed on current period USF obligations, rather than the 2004 True-up amount, so that current period invoice amounts are not considered overdue.

<sup>6</sup> Historically, Outfitter has been called upon by various emergency management and first responder organizations, when natural disasters hit, for last minute technical support, product shipments, or rental equipment. For example, during the Hurricane Katrina disaster in 2005, Outfitter was put on notice by the federal government to fulfill all government accounts before any other customer. Subsequently, Outfitter supplied one-hundred mobile satellite-phones to General Honoré, commander of Joint Task Force Katrina, in support of the disaster relief efforts.

<sup>7</sup> Outfitter’s customers have included, among others, the Port of Corpus Christi, the Maryland Department of Health, the State of Tennessee, the State of California – Office of Emergency Management, and the State of Indiana.

**REDACTED VERSION – FOR PUBLIC INSPECTION**

As required by the FCC's rules,<sup>8</sup> the Company contributed monthly to the USF in 2004 based upon projected revenues reported on its applicable Forms 499-Q.<sup>9</sup> However, the Company later received a USF true-up credit (for all of its 2004 contributions) from USAC on July 15, 2005 because its original 2005 Form 499-A apparently (and inaccurately) reflected zero end-user revenue. On August 24, 2005, the Company received a letter from USAC, dated August 22, 2005 (the "2005 Letter") asking for documentation supporting the revenue reported on Outfitter's 2005 Form 499-A. The Company immediately began correspondence with the USAC staff contact listed on the 2005 Letter. The Company submitted to USAC (via certified mail) a revised 2005 Form 499-A on September 13, 2005. Certified mail receipts show that an individual at USAC signed to receive the revised filing on September 15, 2005. Subsequently, after further discussion with USAC, the Company submitted the Revised 2005 499-A via certified mail on February 22, 2006 to correct a clerical error on its prior revision. USAC received and signed for the Revised 2005 499-A on February 27, 2006.<sup>10</sup> The Revised 2005 499-A corrected the apparent end-user revenue issues, and the full amount of the USF true-up credit (matching the total amount of Outfitter's 2004 USF contributions) was reversed by USAC as of October 13, 2006 and paid by Outfitter as of November 20, 2006. This credit reversal necessarily indicated that the Revised 2005 499-A was processed by USAC in 2006. The Company believed this to have resolved any issues with respect to its Revised 2005 499-A.<sup>11</sup>

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<sup>8</sup> 47 C.F.R. § 54.706(a).

<sup>9</sup> See 47 C.F.R. § 54.709(a)(1) (basing required USF contributions on a contributor's projected revenues).

<sup>10</sup> See Confidential Exhibit 2, which includes a copy of the following: the 2005 Letter; certified mail receipts showing that revisions to the 2005 Form 499-A were signed for and received by USAC; and a copy of the Revised 2005 499-A (the February 22, 2006 version).

<sup>11</sup> However, as explained below, USAC did not properly process the Revised 2005 499-A and additional true-up contribution amounts were not billed to the Company until July 2012.

**REDACTED VERSION – FOR PUBLIC INSPECTION**

On January 17, 2011, the undersigned counsel for Outfitter received an email letter (the “2011 Email”) from the same USAC contact person listed on the 2005 Letter. The 2011 Email claimed that the Company had not reported any end-user revenue on its 2005 Form 499-A, despite the Company having corrected this issue on the Revised 2005 499-A in February 2006. On January 19, 2011, the undersigned responded to the 2011 Email and attached a copy of the Revised 2005 499-A revision from February 2006 along with the certified mail receipts showing USAC’s receipt of the filing (the “2011 Response”). No further communications were received from USAC regarding the 2011 Response. In June 2012, Outfitter received an invoice from the Telecommunications Relay Services (“TRS”) Fund administrator for additional TRS contributions based upon revenue reported on the Revised 2005 499-A. On June 20, 2012, to determine the reason for this TRS invoice, the undersigned contacted USAC staff by phone and was informed that, according to USAC’s system, the Revised 2005 499-A was not inputted into USAC’s system until April 30, 2012. Despite having received the filing in February 2006 (and again in January 2011) and having processed a reversal of the original true-up credit in October 2006, USAC did not “input” the Revised 2005 499-A into its system until more than six years later. In July 2012, Outfitter received a USAC invoice (dated 7/20/2012) which contained the first of three installments for the 2004 True-up amount (the “July 2012 Invoice”). On July 30, 2012, pursuant to a request made to USAC, the undersigned received from USAC staff a reply email (the “2012 Email”) containing a spreadsheet detailing the calculations for the 2004 True-up, and indicating that the Revised 2005 499-A was received by USAC on February 22, 2006 and apparently never processed until July 2012.<sup>12</sup>

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<sup>12</sup> See Confidential Exhibit 3, which includes copies of the following: 2011 Email; 2011 Response; July 2012 Invoice; 2012 Email; and the USAC spreadsheet detailing the 2004 True-up calculations.

## II. GOOD CAUSE EXISTS FOR THE COMMISSION TO GRANT THE LIMITED WAIVERS AND CANCEL THE 2004 TRUE-UP

The overall circumstances of this case show that there is more than sufficient good cause for the Commission to grant a limited waiver and cancel the 2004 True-up.<sup>13</sup> The Commission's rules may be waived for good cause shown.<sup>14</sup> In determining whether good cause exists for a waiver, the Commission looks for particular facts which make strict compliance inconsistent with the public interest,<sup>15</sup> and may take into account considerations of hardship or equity on an individual basis.<sup>16</sup> A waiver and cancellation of the 2004 True-up is warranted in the instant case because the 2004 True-up, based on the Revised 2005 499-A which overstates the Company's actual USF contribution base, is excessive. (Furthermore, as explained in confidential Section III further below, strict compliance with the rules would be inconsistent with the public interest and result in extreme hardship and inequity.)

The revenue reported on the Revised 2005 499-A most likely overstates Outfitter's actual USF contribution base in 2004 by as much as 40%.<sup>17</sup> A significant portion of the Company's revenue is derived from goods and services which are not subject to USF. For example, the Company leases and sells mobile satellite-phones and accessories, provides resold mobile-

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<sup>13</sup> The same circumstances also justify, in the alternative, a waiver to allow the Company to amend its Revised 2005 499-A. Accordingly, to the extent that the Commission does not cancel the 2004 True-up, the following arguments should be applied to a request for limited waiver of the 2005 Form 499-A revision filing deadline.

<sup>14</sup> 47 C.F.R. § 1.3.

<sup>15</sup> See, e.g., *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

<sup>16</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>17</sup> The Company's actual USF contribution base is likely to be no more than the revenue projected for calendar year 2004 on its Forms 499-Q. This total is approximately 60% less than the total reported on the Revised 2005 499-A.



satellite data or information services, and provides resold mobile-satellite services that are utilized in international destinations for calls that do not originate in, terminate in or traverse the U.S.<sup>18</sup> Unfortunately, the accounting firm which had been hired to prepare the Company's Form 499 filings misguidedly included non-assessable revenue in the Company's USF contribution base without understanding the implications. Furthermore, due to errors with the Company's billing system and errors by former internal accounting staff, revenue may have been inadvertently double-booked or even triple-booked at various points in 2004. Unfortunately, due to changes to the Company's billing system and the corruption of records over the years a complete and accurate accounting of revenue (and how that revenue should have been allocated) for 2004 is not possible. Nevertheless, based upon reasonable estimates, the revenue reported on the Revised 2005 499-A is overstated and results in an excessive 2004 True-up amount which should never have been assessed. Accordingly, Outfitter requests that the Commission grant a limited waiver of its rules and cancel the 2004 True-up.<sup>19</sup>

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<sup>18</sup> Furthermore, the Company was unable to distinguish the jurisdictional nature (*e.g.*, intrastate, interstate, international) of its revenue in 2004. Thus, the Company's service revenue was reported as entirely interstate, resulting in an overstated USF contribution base amount. In reality, a large portion of the Company's service revenue would have been derived from non-telecommunications services, or services allocated to a jurisdiction not subject to federal USF obligations.

<sup>19</sup> Alternatively, the Company requests a limited waiver to amend the Revised 2005 499-A based upon a more reasonable estimate of its actual USF contribution base.

**III. GRANT OF A LIMITED WAIVER IS IN THE PUBLIC INTEREST AND  
NECESSARY TO PREVENT EXTREME HARDSHIP AND INEQUITY**

**[REDACTED FOR PUBLIC INSPECTION]**

**[REDACTED FOR PUBLIC INSPECTION]**

**[REDACTED FOR PUBLIC INSPECTION]**


**[REDACTED FOR PUBLIC INSPECTION]**

**[REDACTED FOR PUBLIC INSPECTION]**

**IV. CONCLUSION**

For the reasons set forth above, Outfitter respectfully requests that the Commission grant a limited waiver of the USF contribution rules and cancel the 2004 True-up.<sup>30</sup>

Respectfully submitted,



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SATELLITE, INC.**

August 15, 2012

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<sup>30</sup> The Company requests, in the alternative, that the Commission grant a limited waiver to allow Outfitter to amend its Revised 2005 499-A.

# **EXHIBIT 1**

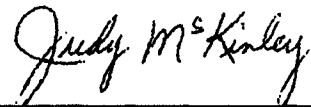
(Declaration of Executive Administrator)



## DECLARATION

I, Judy McKinley, Executive Administrator for Outfitter Satellite, Inc. ("Outfitter"), hereby certify that I have personal knowledge of the factual representations concerning Outfitter, including its business operations, financial situation, tax returns and financial statements contained in the foregoing petition for limited waiver, and declare under penalty of perjury that such factual representations are true and correct to the best of my knowledge, information and belief.

Executed on: 8/13/12

A handwritten signature in cursive script, reading "Judy McKinley", written over a horizontal line.

Judy McKinley  
Executive Administrator  
Outfitter Satellite, Inc.

# **CONFIDENTIAL**

## **EXHIBIT 2**

[REDACTED FOR PUBLIC INSPECTION]

# **CONFIDENTIAL**

## **EXHIBIT 3**

[REDACTED FOR PUBLIC INSPECTION]

# **CONFIDENTIAL**

## **EXHIBIT 4**

[REDACTED FOR PUBLIC INSPECTION]